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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.857 of 2002
(u/s 374 of the Code of Criminal Procedure)

Appellant : Lambodar @ Parmeshwar Chandra, s/o Yadram Chandra, aged about 20 years, R/o village Thuthi, P.S. Jaijaipur, Distt. Janjgir Champa (C.G)

Vs.

Respondent: State of Chhattisgarh

Appearance:

Shri Hemant Kesarwani, counsel for the appellant.
Shri Arun Sao, Govt. Advocate for the State.

JUDGMENT
(16.04.2007)

Sunil Kumar Sinha, J,

(1) This appeal is directed against the judgment of conviction and order of sentence dated 29.6.2002 passed by the Addl. Sessions Judge, Sakti, in Sessions Trial No.5/2001, whereby the learned A.S.J., after holding the appellant guilty of the offence punishable u/ss 363, 366 and 376(2)(f) I.P.C. sentenced him to undergo R.I. for 3 years and fine of Rs. 500/- in default of payment of fine to further undergo R.I. for 3 months; R.I. for 5 years and fine of Rs.1000/- in default of payment of fine to further undergo R.I. for 6 months and R.I. for 10 years and fine of Rs.2000/- in default of payment of fine to further undergo R.I. for one year respectively, with an order to run the sentences concurrently.

(S1)

(2) The brief facts are that on 03.03.2000 at about 15.30 hrs, Ku. Ranu Chandra, a minor girl aged about 10 years, was returning to her house after answering the call of nature. On the way, the appellant met her and gave her some sweets and thereafter on the pretext that he will get her learnt to run the Bicycle, took her to his house and after closing the doors of the house got her laid down on the cot and thereafter committed sexual intercourse against her. The father of the prosecutrix namely Jeetmani (P.W.2) had seen that the appellant is taking his daughter, therefore, on suspicion; he went to the house of the appellant. On his call, the appellant opened the door and on being asked about the prosecutrix, he told that the prosecutrix is not there. However, the prosecutrix came out from the house of the appellant and the father noticed that some semen like stains were there on the frock of the prosecutrix and the prosecutrix herself told him that the appellant has committed sexual intercourse against her. The father took the prosecutrix to the house and he narrated the story to the grand father namely Ratiram (P.W.6) and thereafter a report was lodged in the Police station at about 17.45 hours vide Crime No.29/2000. The prosecutrix was sent for medical examination, her frock & underwear were seized and were sent for chemical examination and after completion of the investigation, charge sheet was filed in the Court of Judicial Magistrate First Class, Sakti, who registered criminal case No.519/2000 and committed the same to the court of sessions on 22.10.2000, from where, it was received on transfer by the Addl. Sessions Judge, Sakti, who conducted the trial.

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(3) The learned Sessions Judge, framed charges u/s 450, 363, 366 & 376(2)(f) I.P.C. and after completion of the trial, acquitted the appellant u/s 450 while convicting him under the aforementioned sections of I.P.C. The conviction is based upon the testimony of the prosecutrix Ranu Chandra (P.W.1), her father Jeetmani (P.W.2) supported by the evidence of Doctor Ku.S. Kachhap (P.W.4), who examined the prosecutrix, and Dr. P.R. Dewangan (P.W.3) who examined the appellant and also the grand father Rati Ram (P.W.6).

(4) Learned counsel for the appellant argued that in fact the prosecution has been failed to prove that the prosecutrix was below 12 years of age on the date of incident, therefore, an offence u/s 376(2)(f) of I.P.C. would not be made out. He further argued that this is the case of false implication and the appellant should be acquitted of the charges framed against him. Alternatively, he argued that the appellant was a young boy aged about 20 years and the punishment imposed against him is harsh which should be reduced to minimum preferably the period already undergone by him which comes nearly 6 years and 4 months as the appellant is in jail since 17.12.2000.

(5) On the other hand, learned State Counsel opposed the above arguments. He submitted that the appellant has been rightly convicted under the aforementioned sections of I.P.C. and no liberal view should be taken in this case.

(6) I have heard learned counsel for the parties at length and have also perused the records of the Sessions Trial.

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(7) So far as the first point regarding age of the prosecutrix is concerned, it has come in the evidence of father that on the date of his examination in Court i.e., 29.3.2001, his daughter was studying in Class-VI. He has more specifically mentioned vide Para 1 that on the said date, she was running 11th year. There is no cross examination on this point. Apart from that, the contents of the F.I.R., Ex.P.1, would show that in the said report, the girl has said herself to be aged about 10 years and in the M.L.C. report of the girl also, on the basis of clinical observations, her age is mentioned as 10 years. Not only this, the contents of the medical report Ex.P.8 would show that Auxiliary and Pubic hairs of the girl were absent and the breasts were also not developed. On the basis of an un-assailed testimony of the father supported by above material on record, it is established that the girl was aged about 10 years on the date of incident and she was studying in Class-V.

(8) The second point argued about the false implication also does not appear to be an appealing factor. The prosecutrix (P.W.1) has deposed vide Paras 1 & 2 of her evidence that she was taken by the appellant to his house and after shutting the doors, the appellant removed her underwear and thereafter he penetrated his Penice in her private part. When she felt pains she tried to cry, on which, the appellant resisted and at that time, her father came over there to whom she narrated the story. This version of the prosecutrix is supported by the First Information Report, lodged by her vide Ex.P.1. She has signed this document and has admitted vide para 3 of her deposition that she had lodged such a

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report in the concerned police station. She has also deposed vide para 4 that she was sent for medical examination and her frock and underwear were seized. In the F.I.R. the prosecutrix has given a detailed version and no relevant part has been omitted on which that should be disbelieved. The lady Doctor namely S. Kachhap (P.W.4) has also deposed that she had examined the girl on 04.03.2000 at about 10.00 a.m. Her report Ex.P-8 would show that the hymen of the girl was ruptured and tears were present which were congested and inflamed and the Vagina was also red and inflamed. It was admitting one finger with pains and the girl was subjected to sexual intercourse. Admittedly, the underwear and frock of the prosecutrix were sent to the State Forensic Science Laboratory, Sagar, for chemical examination. The report of the said Laboratory has been proved on record as Ex.P.17. It contains that on both the articles i.e., underwear (Article A-1) and Frock (Article A-2) semen and human spermatozoa were present. The defence has not been able to demolish all this evidence on record and the evidence of the prosecutrix appears to be fully reliable and it inspires confidence of this Court so as to hold the appellant guilty of the aforementioned sections of I.P.C. Moreover, as stated above, her evidence is supported by the evidence of her father and grand father and also the evidence of lady doctor further supported by the report of F.S.L., Sagar. Therefore, the trial Court has rightly held that the appellant was guilty of the aforesaid offence and the arguments pertaining to false implication of the appellant cannot be entertained.

(9) Coming to the last point regarding punishment, learned counsel for the appellant referred to the decision of the Apex Court rendered in the matter of ***State of Chhattisgarh –Vs- Derha (2004) 9 S.C.C. 699***. In the said case, rape was committed against a girl aged about 8 years and the accused was aged about 18 years on the date of incident and he had also served about 6½ years' imprisonment consequent to the sentence imposed on him and was having a family. In such circumstances, the Apex Court vide Para 8 of the judgment, while allowing the appeal of the State and setting aside the judgment of the High Court, reduced the sentence to 7 years R.I. The submission of learned counsel for the appellant was that almost similar circumstances are also here and the same benefit should be extended to this appellant.

(10) The principle of proportion between crime and punishment is governed by the "*Doctrine of just desert*". The doctrine is the foundation of a criminal sentence which is ultimately awarded for a punishment to the wrong doer. What one really deserves should be the punishment for having committed a crime is the underlying principle. The punishment must not be disproportionately great is a corollary of "*just desert*" which is governed by the same principle which says that there cannot be a punishment without guilt and the basic element behind the principle is the proportion between crime and punishment. The lesser is the gravity of the crime, the smaller would be the punishment and the greater is the gravity of the crime, the higher would be the punishment, subject to the ancillary factors for

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determining the proportion of the same, though all further subject to the statutory obligations specifically provided by law in force.

(11) In case on hand, admittedly the appellant was aged about 20 years and the girl was aged about 10 years and were residents of the same locality. The appellant is in jail from the very beginning i.e., from 17.12.2000 (the first date of his arrest) and thereby he has already undergone imprisonment for about 6 years & 4 months and in the facts and circumstances of this case, I deem it appropriate to reduce his sentence from 10 years R.I. to 7 years which would serve the ends of justice being the quantum *"just desert"*.

(12) In the result the appeal is partly allowed. The conviction and sentence awarded to the appellant u/s 363 & 366 IPC are hereby confirmed. Similarly, his conviction u/s 376(2)(f) I.P.C. is also confirmed. However, the sentence awarded u/s 376(2)(f) is reduced to 7 years R.I. Fine of Rs.2000/- is maintained. In default of payment of fine, the appellant shall further undergo R.I. for one year. The appellant shall be entitled to set off and he shall also be entitled to any legal remission permissible in law for having already served the above sentence of imprisonment. The order of running the sentences concurrently is also confirmed.

Sd/-
Sunil Kumar Sinha
Judge

Rao